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ABSTRACT

Federal block grants, in contrast to categorical programs and revenue sharing, allow states and localities considerable flexibility in meeting needs within broad functional areas; but, they are also designed to assure that funds are spent to pursue national objectives. Before 1981, block grants included varying levels of recipient accountability requirements. These requirements tended to increase over time. Then, in 1981, Congress approved nine new block grants. These incorporated all but one of the five block grants that were already existing. The new block grants were narrower than grants proposed by President Reagan, but they reduced the number of programs and funding levels by as much as 34 percent. Since 1982, the Reagan Administration has made further proposals to consolidate the grants and to reduce federal intervention; Congress hasn't yet (as of 10 May 1983) considered these proposals. Critics worry about negative effects of the new block grants, especially problems of targeting, non-discrimination, and meeting the needs of low-income persons and others requiring special services. Opponents also fear that, with less federal oversight, state and local governments will not be as inclined to pursue civil rights. Although all the recent block grants include some civil rights provisions, none provides the assurance of the narrower categorical programs. (KH)

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BLOCK GRANTS AND THEIR CIVIL RIGHTS IMPLICATIONS

SERIES (B) - BACKGROUND

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BLOCK GRANTS AND THEIR CIVIL RIGHTS IMPLICATIONS*

A. Block Grants and Other Types of Federal Grants-in-Aid

Block grants are best understood by comparing their characteristics and purposes with those of other types of federal grants-in-aid. The Office of Management and Budget (OMB) defines grants-in-aid as "resources provided by the federal government in support of a state or local program of governmental service to the public."** The federal government historically has used three distinct types of grant mechanisms for allocating federal grants-in-aid: categorical programs, block grants, and general revenue sharing. They differ in fund distribution methods, matching requirements, flexibility in the types of eligible activities, recipient eligibility, and extent of federal administrative regulation and oversight. Figure 1, attached, briefly summarizes the characteristics of the three grant mechanisms; each is further described below.

1. Categorical Programs

Federal categorical grants-in-aid, according to the Advisory Commission on Intergovernmental Relations (ACIR), were developed to "help finance specific national interest programs and underwrite demonstration and experimentation projects."*** They are relatively narrow in scope, providing resources to fund a limited range of activities, generally specified in the legislation, although there may be considerable latitude with regard to service models or techniques used. Categorical grants can be further subdivided into four types of programs based on funding procedures:

- Formula grants, in which funds are allocated among recipients, based on factors specified in the statutes or regulations; Vocational Rehabilitation Act grants to states are an example.

- Project grants, in which funds are awarded based on individual proposals to the federal administering agency; grants to local education agencies for Bilingual Education programs (under Title VII of the Elementary and Secondary Education Act) are an example.

- Formula-project grants, in which funds are first allocated to states or other geographic areas based on factors specified in the statutes or regulations, and then grants for funds covered in these allocations are awarded based on project applications; Head Start project grants are an example.

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* A similar but more extensive discussion of the block grant concept was prepared as part of a monograph for the U.S. Commission on Civil Rights, on The Civil Rights Implications of Block Grants, by National Council of La Raza staff as part of the Coalition on Block Grants and Human Needs, May 1983.

** See, for example, OMB's Circular A-11, Appendix B, Revised July 19, 1976.

*** Perhaps the best source of information about the various types of grants-in-aid is ACIR's Categorical Grants: Their Role and Design, Washington, D.C., 1977.

Figure 1: Characteristics of Major Types of Federal Grants-in-Aid

Characteristic	Type of Grant-in-Aid		
	Categorical Grants	Block Grants	General Revenue Sharing
Types of Funding Distribution	4 types: • Project • Formula • Formula-Project • Open-ended Reimbursement	Statutory Formulas	Formula
Permitted Activities	Limited range of activities, usually specified in legislation, to meet a specified need	Wide range of activities within a broad functional area	Almost no limitation on eligible activities
Primary Recipients	State and local general-purpose governmental units, public agencies, Indian tribes, some nonprofit agencies	State and local general-purpose governmental units	State and local general-purpose governmental units
Federal Conditions	Extensive Federal oversight and administrative control	Varied, depending on block grant; Federal requirements usually kept to the minimum required to assure national objectives are met	Minimal recordkeeping and limited reporting requirements; limited Federal oversight
Civil Rights Coverage	Covered by Federal civil rights legislation; language usually included in statutes, with detailed compliance and enforcement procedures in regulations	Covered; specific civil rights language not included in 2 of 1981 block grants, but DOJ has ruled all are covered; 1981 block grant regulations do not specify enforcement or compliance procedures; earlier block grant regulations did	Covered; Title VI specifically incorporated by reference in legislation, with sex added, plus coverage of employment practices of all state and local agencies receiving funds

Primary Source: Advisory Commission on Intergovernmental Relations, Categorical Grants: Their Role and Design, Washington, D.C., ACIR, 1977.

- Open-ended reimbursement grants, in which the federal government reimburses a fixed proportion of state and local program costs; Public Assistance to the blind is an example.

Most categorical grants were enacted to meet perceived national needs for governmental services. Many are targeted to specific populations, such as infants, students, or low-income persons. Each categorical program is designed to provide similar services to individuals and groups throughout the country, regardless of where they reside. Many categorical programs were originally established because states and local governments either were financially unable, or were unwilling, to provide such services. The federal government therefore assumed responsibility for developing, funding, and administering programs to address identified national needs.

The Morrill Act of 1862, establishing land-grant colleges, is considered to be the first categorical grant-in-aid program in the United States. The nature of categorical programs has changed over time, and their number began to increase during the Depression Era. A dramatic increase in the number and range of categorical programs occurred during the period 1964 - 1968, as part of President Lyndon Johnson's War on Poverty. Their growth slowed during the Nixon and Ford years, as these Administrations sought a "New Federalism" with more flexible grant mechanisms, but most existing categorical programs were continued. Today, categorical programs remain the most prevalent form of federal grant-in-aid, encompassing almost every area of federal involvement.

Categorical programs are characterized by a relatively high degree of federal oversight and administrative control, when compared to other types of grants-in-aid. The legislation establishing such programs typically contains not only parameters for the types of activities to be supported, but also target populations and federal oversight responsibilities. Administrative regulations typically add additional requirements and grant conditions, related to planning, financial management, record-keeping and reporting, administrative structures, and performance standards.

Proponents of strong federal oversight argue that such extensive federal requirements are necessary to ensure that services are provided equitably and that they are targeted to areas and individuals with the greatest need. They consider federal government to be the appropriate provider of services to meet basic human needs which are national in scope, regardless of the ability of a particular state or locality to finance these services. However, even the strongest supporters of a strong federal presence in the provision of basic human services recognize that categorical programs have not been fully successful. Categorical programs have been criticized for their failure to equalize the financial resources of poor states and localities, their incomplete ability to assure that funds benefit those with the greatest need, and their administrative inefficiency and burdensome requirements.

Other critics believe that the federal government has become far too entrenched in the lives of American citizens and that it has improperly interfered in matters that should be left to the states and localities. They blame federal requirements for growing program administrative costs, arguing that federal funding has become unnecessarily fragmented, complex, uncoordinated, and duplicative, and that categorical programs constitute a costly and ineffective means of providing services to individuals and groups. They also argue that categorical programs provide too little opportunity for flexibility and

innovation in meeting the special needs of a given state, community, or neighborhood. The other two major types of grants-in-aid, general revenue sharing and block grants, have been developed as a response to such concerns.

2. General Revenue Sharing

The characteristics of general revenue sharing place it at the opposite end of the federal funding continuum from categorical grants. The Advisory Commission on Intergovernmental Relations describes general revenue sharing as designed to: "provide additional financial resources without functional restraints to state and local governments for conducting programs in response to their own priorities."

General revenue sharing is provided through the State and Local Fiscal Assistance Act, originally passed in 1972. General revenue sharing funds are the most flexible federal grant-in-aid funds, with formula allocations provided to state and local general-purpose governments with virtually no regulations limiting the purposes for which the funds may be used. Originally enacted to provide state and local governments with flexible funds to develop innovative projects, general revenue sharing has evolved into a supplementary source of funds for fiscally strapped state and local governments. Funds are used to increase the resources available to state and local governments, not to provide for any specific services.

While general revenue sharing funds are covered by civil rights legislation, including Title VI of the Civil Rights Act, the program includes minimal record-keeping and limited reporting requirements. This makes it virtually impossible to track the fiscal and programmatic effects of revenue-sharing funds, which are usually entered into the general accounts of state and local governments and become indistinguishable from other funds. In 1976, Congress amended the general revenue sharing legislation to require recipient governmental units to report to the Secretary of the Treasury how funds were used, but there has been little review of these reports, and federal oversight of general revenue sharing expenditures has been limited.

Proponents of revenue sharing support the concept because it represents an elimination of what they consider to be the federal intrusion of categorical grant regulations, provides almost unlimited state-local discretion, and involves minimal administrative costs. Some supporters of categorical programs also favor the continuation of general revenue sharing as a useful supplement to categorical funding, arguing that the two mechanisms meet different and equally legitimate needs. Opponents argue that it does not contribute to the achievement of broad, national objectives such as those addressed by categorical programs. They also express concern that revenue sharing funds are not allocated equitably, in accordance with state and local needs and fiscal capacity. Some opponents fear that revenue sharing will eventually replace the categorical grant mechanism, pointing to President Ronald Reagan's New Federalism proposals as evidence of the trend away from categorical program funding to "super revenue sharing."

3. Block Grants

Block grants are generally considered to occupy a middle position between categorical grants, with their extensive Federal administrative involvement, and general revenue sharing, with its minimal federal restrictions. The

Advisory Commission on Intergovernmental Relations describes block grants as grants-in-aid which "allow states and localities considerable flexibility in meeting need within broad functional areas while pursuing national objectives."

The General Accounting Office (GAO) identifies five features which distinguish block grants from other forms of federal assistance:

- Funds may be used for "a wide range of activities within a broadly defined functional area";
- Recipients of funds are permitted "considerable discretion in identifying problems, designing programs, and allocating resources;"
- "Federally imposed administrative, fiscal reporting, planning, and other requirements are kept to the minimum required: to ensure accomplishment of national objectives;
- Funding allocations are based on a "statutory formula" rather than administrative regulations; and
- The initial recipient of funds is usually a general-purpose governmental unit, such as a state or city.*

Block grants can be established in one of two ways: by enacting a new federal program to carry out varied activities to meet an identified national objective -- as with the Omnibus Crime Control and Safe Streets Act of 1968, which established the Law Enforcement Assistance Administration (LEAA) -- or by consolidating a number of previously existing categorical programs into one large block grant -- as with the Comprehensive Employment and Training Act (CETA) of 1973, which consolidated 17 categorical programs. Block grants usually cover a single broad program area such as employment and training, education, or health. In some cases, however, programs have been consolidated even though they were very dissimilar in program area. Figure 2, attached, lists the five block grants enacted before 1981, and indicates the number of categorical programs consolidated within each, as well as primary recipients and distribution formulas.

The pre-1981 block grants were enacted to provide states and local governments with flexible funds to meet pressing national needs. Proponents of block grants at that time argued that this new form of grant-in-aid would allow states, cities, and counties to identify their own priorities and develop programs uniquely suited to meeting the needs of their residents. Supporters of block grants believed that state and local governments, being closer to the people, have a greater understanding of their actual needs than does the more distant federal government. Thus they are better able to develop innovative means of addressing the needs of their residents, and better able to coordinate and oversee programs, avoiding duplication. By reducing burdensome federal requirements, proponents believed that the Congress could make a higher

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* See General Accounting Office, Lessons Learned from Past Block Grants: Implications for Congressional Oversight, Report to the Chairman of the Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives, September 23, 1982.

Figure 2
PRE-1981 Block Grants

Block Grant	Administering Agency	Number of Categorical Programs Consolidated	Primary Recipients	Fund Distribution Formula	Current Status
Partnership for Health (PHA)-1966	Department of Health and Human Services (HHS)	9	States	Population and financial need	Combined with 7 other programs into the Preventive Health and Health Services Bock Grant (1981)
Omnibus Crime Control and Safe Streets (LEAA)-1968	Law Enforcement Assistance Administration (LEAA)	0	States	Population	Defunded after FY 1980
Comprehensive Employment and Training (CETA)-1973	Department of Labor (DOL)	17	General-purpose state and local governments	Unemployment, low income, previous year's funding level authority	Replaced by Job Partnership Training Act of 1982
Community Development Block Grant (CDBG)-1974	Department of Housing and Urban Development (HUD)	6	General-purpose local governments	Population, overcrowded and old housing, poverty, population growth lag	Entitlement program continues; Small City Program now a separate block grant (1981)
Tittle XX Social Services -1975	Department of Health and Human Services (HHS)	2	States	Population	Now the Social Services Block Grant (1981)

Source: General Accounting office, Lessons learned from Post Block Grants: Implications for Congressional Oversight, Report to the Chairman of the Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives, Washington, D.C., GAO, September 23, 1982

proportion of funds available for direct services. Opponents of block grants expressed concern that a reduction in federal requirements would reduce the effectiveness of programs in meeting national objectives.

The pre-1981 block grants included varying levels of recipient accountability and federal oversight. GAO identified 18 different accountability mechanisms applied to one or more of the pre-1981 block grants; they involve such planning-related requirements as annual plans, needs assessments, development of performance standards, and assurances of compliance with programmatic and non-discrimination requirements; restrictions on expenditures such as specification of eligible and ineligible activities, designation of target populations or intended program beneficiaries, earmarking of funds for certain activities, and establishment of pass-through requirements for funds to be provided to subgrantees; record-keeping and reporting requirements; and auditing requirements.

The tendency within the pre-1981 block grants was for state and local accountability requirements, especially reporting responsibilities, to be increased over time. For example, CETA, as originally enacted, was much criticized for not being adequately targeted to low-income persons and groups facing the most severe barriers to permanent employment, such as racial and ethnic minorities, youth, and women. Allegations of misuse of funds were also made. The result was amendments which increased recipient accountability and federal oversight. The other block grants received similar criticism related to inadequate targeting, recordkeeping, citizen participation, and state administration. Changes were eventually enacted in the Community Development Block Grant (CDBG) and the LEAA block grant, with increased federal specification of how funds could be spent and correspondingly decreased recipient flexibility. Only in the Title XX Social Services block grant were federal restrictions reduced over time.

The experiences of the pre-1981 block grants did not settle the controversy concerning the relative merits of block grants and categorical programs. In 1981, as part of his economic recovery program, President Ronald Reagan proposed the consolidation of dozens of categorical programs into five block grants to the states in education, social services, health services, energy and emergency assistance, and community development. Along with the consolidations, President Reagan proposed funding reductions of 25 percent for each of the block grants. Congress did not enact these five block grants, but did approve nine narrower block grants which included fewer programs, as part of the Omnibus Budget Reconciliation Act of 1981. Included, as shown in Figure 3, were four health-related block grants and one block grant each in education, community development, social services, community services, and energy. Seven of the nine block grants were to be administered by the Department of Health and Human Services (HHS), and one each by the Department of Education and the Department of Housing and Urban Development (HUD). Of the five pre-1981 block grants, two (Partnership for Health and Title XX Social Services) have been incorporated into the nine block grants enacted in 1981. Only one of the original five block grants, CDBG, still exists, although its Small Cities Program is now a separate block grant.

Unlike previous block grants, the enactment of the 1981 block grants was accompanied by funding reductions of up to 34 percent. All these block grants were enacted at once, and the Reagan Administration provided for interdepartmental coordination of such efforts as writing of regulations. The Office

Figure 3
1981 Block Grants

Block Grant	Administering Agency	Programs Consolidated	Primary Recipients	Funding Change Accompanying Block Grant	Matching Requirements
Social Services	Department of Health and Human Services (HHS)	2 - Previously the Title XX Social Services Block Grant	States	-20%	None
Low-Income Home Energy Assistance	HHS	1 - The Home Energy Assistance Program	States	+1%	None
Alcohol, Drug Abuse, and Mental Health	HHS	10 - Alcohol abuse and drug abuse treatment, and community mental health centers	States	-20%	No match; Federal funds must not supplant state or local funds
Community Services	HHS	8 - Includes most programs previously funded by the Community Services Administration	States	-34%	None
Maternal and Child Health Services	HHS	10 - Maternal and child health, programs for disabled children, other special child health programs	States	-24%	75%
Preventive Health and Health Services	HHS	8 - Varied services, including home health care, rodent control, fluoridation, hypertension, health education, health incentive grants, rape crisis centers, emergency medical services	States	-12%	No match; Federal funds must not supplant state or local funds
Primary Health Care	HHS	2 - Community health centers	States	-25%	20%, FY, 1983; 33 1/3%, FY 1984
Community Development-Small Cities	Department of Housing and Urban Development (HUD)	1 - Small Cities Program from the Community Development Block Grant	States; pass-through to general-purpose local governments required	+10%	10%
Elementary and Secondary Education	Department of Education	38 - Includes old Title I Education for the Disadvantaged as Chapter 1, plus many small programs and Emergency School Assistance as Chapter II	State education agencies; pass-through required to local education agencies	-12%	No match; Federal funds must not supplant state or local funds

Sources: General Accounting Office, Early Observations on Block Grant Implementation, Report to the Congress, Washington, D.C., GAO, August 24, 1982; and Janet Schroyer-Portillo, Primer on Block Grants and the New Federalism, Washington, D.C., National Council of La Raza, March 1, 1982.

of Management and Budget (OMB) chaired the interagency task force responsible for coordination of block grant implementation. As a part of his New Federalism initiative, President Reagan had indicated that the regulations would allow maximum discretion in block grant administration and implementation to the states, who were the primary recipients of funds under all nine of the new block grants. The regulations for all seven HHS-administered block grants were included in a single set of "comprehensive regulations" eight pages long, which primarily reiterated the language of the block grant statute. The other two departments eventually issued similarly brief regulations, although their initial drafts, submitted to OMB, were more extensive.

Observers express differing views about these block grants. Proponents applaud the lack of federal requirements and believe that the block grants will accomplish significant reductions in administrative costs as well as development of programs which are effective and appropriate for meeting local needs. Some supporters of the block grant concept, however, express concern over the budget cuts which accompanied them. Since states are the primary recipients of funds under the new block grants, some concern has been expressed by local governments, especially large cities, about the distribution of funds within states. In addition, some observers believe that state governments are less likely than localities to be sensitive to the needs of certain population groups, particularly those with little political influence at the state level. The new block grants include limited recipient requirements regarding planning, recordkeeping and reporting, monitoring and evaluation, and citizen participation, and tend to leave to the states the responsibility for establishing procedures for program accountability. Opponents of the block grants predict negative effects related to targeting, non-discrimination, and quality of services, and express particularly grave concern about the effects of the combined budget cuts and block grants on service access for low-income persons and for groups with special need for services, such as minorities, women, the handicapped, and the elderly.

Only one new block grant included in the President's New Federalism proposals was passed in 1982: new employment and training legislation to replace CETA. The Job Training Partnership Act (JTPA) is viewed as a block grant rather than a categorical program, since it gives states great latitude in use of funds and is accompanied by very brief regulations. It includes statutory language similar to that of the pre-1981 block grants, with more federal restrictions and accountability requirements than the 1981 block grants. JTPA is now in its planning phase, and will replace CETA on October 1, 1983.

B. Proposed Legislation

In addition to the already enacted block grants, the Reagan Administration has proposed additional New Federalism legislation. The President's 1982 State of the Union Address called for a transitional plan for "super revenue sharing." Under this plan, states would have assumed administrative control of over 40 federal categorical programs in the areas of education, health, nutrition, social services, transportation, and community development. For the first four years, financing for programs included in the "turnback" would have been provided by a federal "trust fund," using existing alcohol, tobacco, and telephone excise taxes, and a portion of gasoline taxes and oil windfall profit taxes. At the end of this period, the taxes would have been abolished, and the states would have assumed full financial responsibility for these programs, with the right to levy similar taxes at the state level. They would also have

had the right to alter or discontinue the programs as they saw fit. In addition, under the 1982 proposal, under a plan known as the "swap," the states would have assumed complete administrative and financial responsibility for the Food Stamps program and Aid to Families with Dependent Children (AFDC), in return for federal assumption of the Medicaid program.

These proposals encountered considerable opposition, based largely on disparities among the states in the ability to finance the "turnback" programs through state taxes, and state opposition to assumption of the Food Stamps and AFDC programs. Considerable discussion between White House officials and the National Governors' Association led to counterproposals, and a revised Administration proposal which eliminated Food Stamps from the proposed "swap." No action was taken in Congress.

In 1983, the Reagan Administration issued a revised New Federalism proposal. It makes no mention of an entitlement program "swap." Instead, it focuses on the "turnback" proposal, and calls for the creation of four "megablock grants," consolidating most of the programs targeted in the 1982 New Federalism proposal, including the current block grants. Figure 4, attached, provides a list of these programs. The four megablock grants would include: (1) a Federal-Local Block Grant, encompassing CDBG and general revenue sharing; (2) a Federal-State Block Grant, consolidating 22 programs, including health, social services, education, and community services programs; (3) a Rural Housing Block Grant; and (4) a Transportation Block Grant. States would receive federal funding for these megablock grants for five years, at the level enacted in Fiscal Year 1984. Funding for the Federal-State Block Grant would come from federal excise taxes on alcohol, tobacco, and telephones; the Transportation Block Grant would be financed by the federal gasoline tax. States might be able to assume these revenue sources, following a determination of the feasibility of such a plan, but would not be assured of federal funding after the first five years.

At its 1983 midwinter meeting, the National Governors' Association passed a "Resolution on Federalism" which expressed their opposition to the megablock grants as "attempts to shift current federal costs back to states and localities under the guise of Federalism." Congressional reaction has been mixed, and there is disagreement concerning whether the 1983 proposals will be considered by Congress this year.

C. Grants-In-Aid and Civil Rights

The establishment of a sound system for providing equal protections and opportunities to all residents of the United States has been a long and arduous struggle, with progress accomplished largely through federal action. Congress has enacted legislation which prohibits discrimination against individuals based on race, color, national origin, religion, sex, age, and handicap, and has set forth procedures for ensuring compliance. The executive branch has supplemented the legislation with administrative regulations and guidelines, and with Executive Orders to increase coverage of non-discrimination regulations. Individuals and advocacy organizations have sought judicial redress for unequal treatment and have urged passage of civil rights laws at the federal, state, and local levels. Persons who are covered by federal civil rights laws -- so-called "protected classes" -- now enjoy legal protections against discrimination in programs funded in whole or in part through federal monies.

FIGURE 4

PROPOSED MEGABLOCK GRANTS

State Block Grant

Rehabilitation Services
Vocational Education
Adult Education
State Education Block Grant (ECIA, Chapter 2)
Women, Infants, and Children
Low-Income Home Energy Assistance
Social Services Block Grant
Community Services Block Grant
Alcohol, Drug Abuse, and Mental Health Block Grant
Maternal and Child Health Block Grant
Rural Water and Waste Disposal Grants (FmHA)
Water and Sewer Facility Loans (FmHA)
Community Facility Loans (FmHA)
CDBG - Non-Entitlement Portion Grants for the Construction of Municipal Waste Water Treatment Works (EPA)
Child Welfare Services
Adoption Assistance
Foster Care
Preventive Health and Health Services Block Grant
Child Abuse State Grants
Runaway Youth

Federal-Local Block Grant

General Revenue Sharing
CDBG - Entitlement Portion

Transportation Block Grants

Urban System
Secondary System
Non-Primary Bridges
Highway Safety (FHWA 402 Grants)
Hazard Elimination
Rail Highway Crossing

Rural Housing Block Grant

Rural Housing Insurance Fund
Very Low-Income Repair Grants
Mutual and Self-Help Grants
Rental Assistance Program

Preventing discrimination requires continued monitoring and enforcement of federal civil rights legislation and regulations -- efforts which have been far from perfect under categorical programs and general revenue sharing. Many opponents of block grants fear that decentralization of program administration and reduction of federal oversight, especially the minimal recordkeeping and reporting requirements included in the nine block grants, will make federal enforcement of non-discrimination difficult or impossible. They are also concerned that state and local governments will not undertake active civil rights enforcement as they implement block grants, due to lack of skills and experience, lack of resources, or lack of commitment to non-discrimination.

1. Civil Rights Guarantees and Federal Financial Assistance

The federal government first acknowledged its responsibility to uphold equal rights for all American citizens in 1865, with the enactment of the 13th Amendment to the Constitution, which not only ended slavery, but also included provisions for federal enforcement of equal rights and opportunities for minorities in the United States. The 14th and 15th Amendments instituted specific mandates for protecting the rights of minorities. Congress also passed several civil rights laws betwen 1866 and 1875. However, the federal government was often unable or unwilling to enforce its own requirements, and racial discrimination continued. States continued to enact legislation which segregated the races in housing, public transportation, educational institutions, and other public facilities, and in some cases prevented intermarriage and other social contacts. These discriminatory practices continued virtually unchecked by the federal government for more than 75 years.

Change began to come through several federal court decisions which struck down laws mandating segregation. A major civil rights victory was the 1954 Supreme Court decision in Brown v. the Board of Education of Topeka, which struck down public school segregation. The Civil Rights Act of 1957 followed, creating the U.S. Commission on Civil Rights and the position of Assistant Attorney General for Civil Rights in the Department of Justice. These successes were followed by years of action by civil rights advocates, including additional court victories. The federal government eventually responded with the passage of the Civil Rights Act of 1964, which prohibited discrimination in employment, public facilities, elections, and federal financial assistance, and became the cornerstone for federal civil rights enforcement activities. Other legislation followed, including the Voting Rights Act of 1965, the Fair Housing Act of 1968, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, which extended protections to additional groups and increased protections for groups previously covered. These laws, accompanied by Executive Orders governing federal contractors and federal employees, marked the re-emergence of the federal government as the leading enforcer of civil rights in this nation.

One civil rights provision has special significance in affirming that federal funds will be used to serve all residents in a nondiscriminatory manner. Title VI of the Civil Rights Act of 1964 prohibits discrimination in the use of federal monies; it provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Title VI served as the model for development of other legislation, including Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational institutions receiving federal funds; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on handicap in federally funded programs; and the Age Discrimination Act of 1975, a part of the Older Americans Act, which prohibits discrimination based on age in the use of federal funds. Title VI is referenced in each of these statutes. Together, the legislation sets forth a consistent and uniform federal policy which applies to all federal assistance -- grants, loans, and contracts -- whether or not their authorizing legislation specifically includes non-discrimination language.

One of the most powerful means of enforcing the civil rights provisions regarding programs supported by federal funds is the sanction of fund termination. Although this sanction has rarely been used, the threat of a cut-off of federal funds has been a particularly effective means of encouraging recipients of federal categorical program funds to ensure non-discrimination in the use of such funds. Federal requirements for data collection and recordkeeping have helped assure that there is adequate documentation of how monies are spent and who are the program beneficiaries, and thus provide a basis for monitoring expenditures and program operations to identify any discriminatory practices.

Related to non-discrimination provisions are targeting requirements, often included in categorical program legislation. Sometimes targeting requirements are designed to eliminate the effects of past discrimination, and thus provide for services to particular groups, such as racial or ethnic minorities or women. In other cases, programs are targeted to low-income people and/or communities. Since minorities, older Americans, women (especially female heads of households) and handicapped persons are disproportionately likely to have low incomes, such income targeting contributes to non-discrimination.

Categorical programs have sought to ensure equitable use of federal funds through other methods, such as funds allocation processes. Under many programs, funds are distributed to general-purpose governmental units and public agencies on a formula basis, using factors such as population, financial need or other income measures, program need, or number of eligible recipients. As with targeting requirements, these formulas often favor protected groups, as with programs for older Americans or for handicapped people which provide for allocation of funding based on the estimated number of older Americans or handicapped persons living within a particular jurisdiction. In other cases, formulas which consider financial need tend to concentrate funds in communities with large numbers of low-income residents. As already noted, since members of protected classes are particularly likely to be low-income, such formulas tend to increase their access to services and benefits provided through these formula grants.

Requirements of categorical programs for citizen participation in program planning, implementation, and evaluation can also contribute to non-discrimination, particularly where such participation is required to include beneficiaries of program services or representatives of specified categories of residents, including minorities and other protected groups. Categorical programs usually include provisions for public hearings, which provide a mechanism for groups protected by non-discrimination legislation to offer program input and express their concerns. Some programs have more extensive citizen participation requirements; for example, the Title I Migrant Education Program still requires the use of Migrant Parent Advisory Councils.

Such federal safeguards, some directly and some indirectly related to civil rights protections, help ensure equitable distribution of federal funds and access to the services and benefits they provide. Yet even with these requirements, and with a variety of written assurances contained in applications and in grant and contract award documents, civil rights laws often have not been adequately enforced. Under the 1981 block grants and the 1983 New Federalism proposals, many of the civil rights-related federal requirements common to most categorical programs are no longer mandated.

2. Applicability of Civil Rights Laws to Block Grants

The nine block grants enacted in 1981 include some specific civil rights provisions. Legislation governing seven of the nine block grants -- all but Social Services and Education -- includes specific Title VI language prohibiting discrimination based on race, color, or national origin, as well as Section 504 and Age Discrimination Act protections. Discrimination based on sex and religion is specifically prohibited in the legislation authorizing the four health-related block grants, and discrimination based on sex is specifically prohibited in the Low-Income energy Assistance and Community Services Block Grants. The Social Services and Education block grants contain no specific references to non-discrimination. The Office of Management and Budget requested that the Department of Justice (DOJ) determine whether the Social Services and Education block grants were covered by civil rights laws. DOJ determined that Title VI, Section 504, and the Age Discrimination Act do apply to these block grants, since they apply to all recipients of federal financial assistance, and that Title IX applies to all educational institutions receiving assistance through these two block grants. All nine block grants are thus covered by existing civil rights laws.

One civil rights-related question which has not yet been fully answered is who is responsible for monitoring and enforcing non-discrimination under the block grants. Many of the mechanisms used in categorical programs and earlier block grants to facilitate compliance and federal enforcement have been either minimized or eliminated in the block grants; these include targeting, application requirements, data collection, recordkeeping, reporting, and citizen participation. The federal regulations governing the seven block grants administered by the Department of Health and Human Services explicitly state that in the case of a complaint, the federal government will "ordinarily defer to the state's interpretation of its assurances and the statutory provisions." This language does not occur in the regulations governing the Education- or HUD-administered block grants. For the HHS block grants, however, it implies a new role for states in ensuring non-discrimination, a responsibility which in categorical programs and in most previous block grants generally remained with the federal government. However, the HHS regulations do not provide any guidance to the states concerning how non-discrimination is to be assured, or what the states' specific enforcement responsibilities will be.

Because responsibility for civil rights enforcement under the block grants has not yet been clearly assigned, and because the states have minimal experience in Title VI enforcement, civil rights advocates express grave concerns over the possible long-term impact of block grants on civil rights enforcement.